



4 October 2016

Stuart Richardson  
COAG Energy Council Secretariat  
GPO Box 9839  
Canberra ACT 2601

Lodged by email: [energycouncil@industry.gov.au](mailto:energycouncil@industry.gov.au)

Dear Mr Richardson,

**RE: Consumer protections for behind-the-meter energy supply - Consultation Paper**

Origin welcomes the opportunity to respond to the COAG Energy Council's (EC) Discussion Paper on Stand-alone energy systems in the Electricity Market.

Origin does not consider it appropriate to cover behind-the-meter services with the various instruments that apply to conventional market participants in the National Energy Market (NEM) at this time. Consumers that access behind-the-meter technologies are making a choice to utilise these services and we do not believe that this constitutes an essential service in the manner of traditional energy supply. Accordingly, it is more appropriate that the provisions of the Australian Consumer Law (ACL) apply to these activities. Origin believes that this will enable new technologies and business models to develop in a competitive marketplace.

Given the rapidly evolving nature of the electricity market, Origin would strongly encourage the COAG EC to focus its efforts on reviewing the applicability of the National Energy Consumer Framework (NECF) more generally to traditional grid-supplied energy, rather than seeking to transpose these protections on to behind-the-meter technologies. The NECF was drafted with conventional energy supply as its basis. Evolving energy market dynamics due to changing customer preferences and emerging technologies question whether this founding assumption continues to apply. Consequently, it is timely to consider whether the extensive energy regulatory framework that applied in addition to the ACL will, over time, become increasingly incongruous with the market reality of consumers locating their supply from a diversity of sources. Origin believes that the most appropriate solution to this problem, from a competitive perspective, is not to lift regulation on PV and other behind-the-meter services but to reduce regulation so that consumers can access greater choice.

In terms of reviewing customer protections for behind-the-meter energy products, we believe that the COAG EC ought to take an empirical approach instead of regulating on the basis of hypothetical problems that may arise. Origin believes that it will be useful for the Government to continue to monitor behind-the-meter systems in order to understand what consumer needs arise and whether the ACL is an effective regulatory mechanism.

Origin would be pleased to discuss any matters raised within this response with the Commission. Please contact Timothy Wilson (Retail Regulatory Analyst) in the first instance on (03) 8665 7155.

Yours sincerely

A handwritten signature in blue ink, appearing to read "K. Robertson".

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Objectives

*What objectives, beyond the Energy Council's general objective, should be held in mind in addressing regulatory arrangements for behind the meter electricity systems?*

Whilst behind-the-meter products may involve the generation and supply of physical electricity, Origin does not believe that the National Electricity Objective (NEO) is the appropriate framework for addressing the regulatory arrangements for behind-the-meter energy services. The NEM has developed a regulatory framework in the National Electricity Law (NEL) and National Electricity Retail Law (NERL) that is predicated on energy being an essential service. Accordingly, specific obligations and protections have been developed to maximize the ability of consumers to access a reliable and affordable supply of energy. In contrast, the rationale for new behind-the-meter technologies is to provide customers with services that exist outside of typical grid-supplied energy. Accordingly, we believe that the primary objective of these regulatory arrangements should be to support consumer choice in accessing new and emerging behind-the-meter technologies.

Origin believes that individual technologies, like distributed generation with storage, should not be the focus of regulatory decision making. Any new rules or regulations ought to be technology agnostic, focusing instead on the impact that particular products have on the customer. To support this, the Council should consider secondary objectives, such as encouraging competition and innovation, in the assessing regulatory frameworks of behind-the-meter services. We believe that meeting these objectives require a light-handed approach to regulation and that this is met through existing protections in the ACL.

What is a behind-the-meter electricity system

*Is the behind the meter electricity system definition appropriate for our purposes?*

*In defining a behind the meter system, is it important to consider other factors about the system such as:*

- a) the ownership model*
- b) the role of the system*
- c) the number of customer's supplied.*

*Is it important to consider behind the meter electricity systems for small and large customers for our purposes?*

Deployment scenarios

*Are there any unique regulatory challenges that are presented by the different deployment scenarios?*

Ownership models

*Are there any unique regulatory challenges or consumer protection issues that are presented by the different ownership models?*

Origin believes that individual technologies, like distributed generation with storage, should not be the focus of regulatory decision making. We would therefore define "behind-the-meter" as any energy-related service that exists literally behind a customer's market meter. It is preferable not to limit the definition to the delivery of electricity as some services may conceivably utilize grid supplied energy behind-the-meter. Similarly, we would not suggest using the ownership model, the role of the system or the number of customers to define behind-the meter electricity systems. Imposing these limits in the definition is unnecessary and may result in some behind-the-meter technologies being captured and others excluded.

Origin is not aware of any unique challenges that arise as a consequence of different ownership models or deployment scenarios. We believe that the ACL deals appropriately with customers that choose to outright own a system or to enter into a leasing arrangement.

## Competition

*What are the issues for behind the meter electricity systems and competitive neutrality?*

*Could different regulatory environments for consumer protections associated with electricity supply products and services be justified based on:*

- a) the service provided?*
- b) the ownership model?*
- c) other?*

*Are there particular consumer protections that need to be consistent for competition or to protect a consumer harm that has the potential to arise in all circumstances, for example dispute resolution?*

*How can we ensure that regulatory requirements to provide consumer protections are imposed on the appropriate party?*

Energy markets are undergoing significant change, driven by improvements to technology and shifts in consumer preferences. It is important that the appropriateness of the rules and regulations that apply to the NEM be considered by policy-makers in this changing environment. However, instead of adjusting rules to ensure that the current framework can accommodate future products that are developed in the market, in Origin's view it is more beneficial to reconsider the appropriateness of energy market framework altogether.

The NEM is predicated on a formal regulatory delineation between wholesale, network and retail markets. The installation of the most common behind-the-meter technology at present, rooftop solar PV, directly impacts on the operation of each of these markets:

- rooftop solar displaces the need for households to purchase energy from the wholesale market;
- as distributed generation, it uses the local network to export power and reduces demand for transmission; and
- this impacts the retailer market either by reducing the amount of energy a retailer sells to its customers or (in the case of SPPA models) acts a substitute source of supply.

By operating across all three areas of the NEM, solar PV presents a fundamental challenge to the existing regulatory framework and the competitive neutrality within the regulated energy market. Whereas participants in the wholesale, network and retail markets are constrained by existing rules, solar is unimpeded. Origin believes that the most appropriate solution to this problem, from a competitive perspective, is to reduce regulation so that consumers can access greater choice. This does not mean that relevant protections are wound back entirely but, rather, regulations better reflect the degree of choice a customer has in accessing energy and the price they are willing to pay for those services.

All Australian energy consumers are covered by the ACL and *Competition and Consumer Act 2010* (CCA). Energy-specific consumer protections, like those under NECF, are quite prescriptive in how an energy supplier needs to deliver that protection. For example, the ACL includes core consumer protection provisions prohibiting misleading or deceptive conduct, unconscionable conduct and unfair terms in standard form consumer contracts. The NECF, however, specifies what terms and conditions must be included in a standard form energy consumer contract, like a requirement to bill a consumer every three months unless the retailer has explicit and informed consent to bill another frequency. For voluntary behind-the-meter products, mandating the billing cycle through regulation puts in place an unnecessary regulatory burden, for no benefit to the consumer. Most likely, it would increase the cost of delivering the product, which impedes effective competition. In Origin's view, this is not in the long term interests of consumers.

An example of a requirement that could create unnecessary confusion for customers is the retailer requirement to provide customers with information about the availability of state-specific energy concessions. For an energy retailer who predominately administers many of these concessions on

behalf of state governments, there is a clear link for the consumer between receiving the information from their retailer, discussing their eligibility and, where applicable, receiving the concession rebate on their energy bill. Given a behind-the-meter supplier would not be applying any state-based concession for a consumer, the connection between receiving information and actioning it would not exist. There is also a risk that the information provided by the retailer and behind-the-meter supplier may differ – even in presentation – which the consumer may construe as receiving different messages. Again, applying this provision would increase regulatory costs for no added benefit for the consumer.

Having reviewed the NECF consumer protection requirements that would apply to behind-the-meter system, it is clear that:

1. Many requirements may not apply to the nature of a behind-the-meter business model;
2. Some requirements could create unnecessary confusion for consumers;
3. Consumers will have adequate protections under other regulatory frameworks, like the ACL and Competition and Consumer Act.

Where customers choose to go off-grid, Origin does not consider additional customer protections are necessary. As with on-grid solar products, customers are making a rational decision to forego reliable grid supplied energy (which is considered to be an essential service) and to obtain supply from another source. If an off-grid customer desires the full range of customer protections and the reliability associated with conventional energy supply, then they can choose to retain an on-grid connection with a retailer. There may be a question as to whether a customer choosing to disconnect from the grid should confirm they understand the consumer protections under NECF would no longer apply, though they would continue to have access the consumer protections under the ACL and CCA.

#### Asymmetric information

*Do you agree that risks of this nature may exist to consumers of behind the meter electricity systems? Do you believe consumers would receive sufficient information to enable them to make considered decisions regarding behind the meter electricity systems? Or are consumer protections required regarding information provision?*

*Should there be further information provided to consumers if they are only reducing their reliance on the network (considering this did not happen for solar customers)? Should this be different if the electricity system completely removes the consumer from the grid?*

*What information should be provided to consumers regarding the nature of behind the meter electricity systems, before signing up to them? Does this level of information change as product offerings become more complex?*

*Does the business model under which the behind the meter system was acquired impact on the information provided to the customer?*

*Do you consider that consumers of all behind the meter supply electricity systems should be given clear information about the implications of their supply choice, including clearly demarcating the protections available under the NECF for grid supply?*

*Do stakeholders believe consumers could be provided with a behind the meter electricity system without their consent?*

Origin is of the view that, given the early stage of development in the market for alternative energy supply and emerging products in the electricity market, a light-handed approach to regulation is appropriate. Central to this is then recognition that information provision to customers is key to ensuring that they are informed at the time of contracting for products and services that may complement or substitute their conventional electricity supply. To some extent, misleading and deceptive conduct provisions of the ACL cover this, but it may be appropriate to extend information provisions so that customers are aware of the services they are voluntarily contracting out of. This might include the range of consumer protections under the NEL and NERL that will not apply to their arrangements unless they are agreed to in contract terms and conditions. A good example of this

regulation is Condition 20 of the Australian Energy Regulator's (Retail) Exempt Selling Guideline which applies to alternative energy services:

*An exempt person must provide the customer in writing a plain English notice explaining that the contract is covered by Australian consumer protection laws and is separate to the customer's contract with their retailer and distributor which are covered under the National Energy Retail Law.<sup>1</sup>*

In terms of specific information that may be provided, we believe the following are broadly applicable:

- Advise customers that the behind-the-meter system does not impact on their right to choose their own retailer (except in the case of full off-grid supply);
- Make clear that behind-the-meter providers are not acting as authorised retailers and the implication of this for the consumer;
- Explain the process for dispute resolution that is contained in the contract;
- Set out in their agreement the frequency of bills and terms for payments; and
- Provide adequate information on the term and costs that apply to the agreement.

Consumers that possess this information should be permitted to choose an energy system that meets their needs without being constrained by energy-specific regulation.

**Availability and reliability**

*Is the right to access the interconnected electricity system a sufficient consumer protection to ensure consumers have access to electricity supply?*

*Where a customer has chosen to disconnect from the interconnected electricity system, which party should bear the costs associated with the customer reconnecting to the interconnected electricity system?*

*Do you consider that determining the level of redundancy incorporated in a behind the meter electricity system is a matter to be determined by the consumer?*

*What, if any, consumer protections should apply in relation to the availability and reliability of behind the meter products and services?*

Where customers disconnect from an energy system this represents an active choice on their behalf to access alternative energy supplies to those available on the grid. This decision should not be cross-subsidised by other consumers—customers must make this decision on the basis of the full costs that they are likely to incur both on and off-the-grid. Accordingly, any cost associated with connecting and reconnecting from the grid ought to be met on a user-pays basis.

Consumers are best placed to determine the level of redundancy they require in a behind-the-meter system. Most customers will have the grid to fall back on in the event that their behind-the-meter service is not operating. Where customers are entirely off-grid then they are best placed to determine how much redundancy they wish to pay for in their behind-the-meter energy system. Moving off-grid is an active choice that a customer has made and they are consciously determining how much supply redundancy they value as part of making this decision. Regulating minimum standards will simply reduce the amount of choice these customers have.

In terms of customer protections for reliability and availability, we believe that a combination of the ACL and applicable Australian standards are appropriate. These will ensure that technology is reliable according to expected standards of performance. Warranties will provide customers with recourse where these standards are not met.

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<sup>1</sup> Australian Energy Regulator, Retail Exempt Selling Guideline—version 4, March 2016, p. 40.

#### Vulnerable customers

*Are there classes of vulnerable consumers in relation to behind the meter electricity systems?  
What do these classes of vulnerable consumers look like? At what point does a consumer become vulnerable?  
What consumer protections are needed for these identified classes of vulnerable consumer?*

For the reasons we have stated above, it is inappropriate to transpose the regulatory concepts from the NEL and NERL to behind-the-meter systems. There are undoubtedly financially vulnerable customers that purchase a range of consumer goods and services; it is conceivable that a consumer may fall into financial hardship during the term of their contract and not be able to meet this expense. However, in the case of grid-connected customers, they will not lose their energy supply if they fail to meet payments for their behind-the-meter technology. If a customer is off-grid, then they may lose supply, but this is a risk that they have voluntarily assumed by exiting the grid in the first place.

#### Resolving disputes

*Should consumers with behind the meter electricity systems have access to an independent dispute resolution scheme?  
How should the costs associated with the scheme be allocated?  
Are there benefits in a consistent dispute resolution scheme (i.e. an Ombudsman scheme) applying across grid connected and behind the meter arrangements?*

As we have stated above, consumers ought to be made aware of their dispute resolution rights prior to entering into a contract for behind-the-meter services.

In terms of accessing Ombudsman schemes there is a risk of networks and retailers subsidising these activities unless suitable membership fees are implemented. If behind-the-meter service providers are not meeting the cost of Ombudsman complaints then they have less of an incentive to respond to relevant issues. This may therefore undermine the practical benefit of opening Ombudsman's to behind-the-meter providers. Origin believes that the current fair trading provisions are adequate for dispute resolution. At this stage, these arrangements appear to be sufficient to resolve issues that arise with behind-the-meter technologies.

#### Transaction Costs

*Should a regulated service be provided to small consumers to enable them to compare prices for similar behind the meter electricity systems?  
Should all similar behind the meter products have standard contracts in place?*

A regulated price comparison service may be justified where customers are accessing an essential service in a deregulated market. This is evidently the case for energy retailers who are providing an essential service. However, behind-the-meter systems are additional services, and requiring them to participate in a regulated price comparison activity will simply lift their costs and constrain their ability to tailor different services for clients. There are plenty of markets that exist where prices are determined through customers taking steps to obtain several quotes and reaching their own a conclusion on which provider suits them. The internet already does a reasonable job of assisting consumers through review websites (such as Word of Mouth, Facebook and Google review). In the case of comparing behind-the-meter products, there is the added complication of products differing in quality; a regulated service may not capture these qualitative differences as effectively as a market based solution that enables consumers to provide written reviews and other information. Origin believes that, if there is a demonstrable need for a price comparison service, then there is plenty of evidence to suggest that a market based solution will arise via the internet.

Origin does not support standard contracts for behind-the-meter services. We are of the view that, given the early stage of development in the market for behind-the-meter services, a light-handed approach to regulation is appropriate. Applying standard contract terms will constrain innovation and

the development of new services. In addition, there has not been a demonstrated regulatory need to impose such terms and conditions for a non-essential service.

**Conclusion**

*Of the various issues raised in this paper, which areas have the highest risks and should be prioritised?*

*Is there potential for consumer harm that has not been identified in this paper which warrants regulated consumer protection?*

Origin does not believe that emerging behind-the-meter services represent a degree of risk that warrants additional regulation at this stage. Nor is it appropriate to transpose existing energy frameworks and arrangements as a basis for regulating behind-the-meter energy systems. We believe that the ACL ought to be the starting point for regulating these activities and that an empirical approach ought to be taken to determining the next steps. Rather than anticipating what issues may arise from the perspective of the existing energy regulatory framework, we believe that it will be useful for the Government to continue to monitor behind-the-meter systems in order to understand what consumer needs arise and whether the ACL is an effective regulatory mechanism.